lant of the means of prosecuting the appeal. In our view the appellant's motion is not consistent with the practice on which this court, after consideration, has determined."

Halsbury's Laws of England, 3rd Edition, Volume 16 at page 35 states: —

"The court has an absolute and unfettered discretion as to the granting or refusing a stay, and as to the terms upon which it will grant it, and will, as a rule, only grant it if there are special circumstances, which must be deposed to on affidavit unless the application is made at the hearing."

An appeal which would be nugatory if stay was refused by reason of the poverty of the respondent would be an example of special circumstances. See *Wilson* v. *Church (No. 2)*.[5] Another example is that payment of a judgment debt would destroy the substratum of the appeal: *Metropolitan Real and General Property Trust, Ltd.* v. *Slaters and Bodega Ltd.*[6] However, an allegation on an appeal that there has been misdirection at the trial would not be sufficient to bring it within the special circumstances: *Monk* v. *Bartram*.[7]

I agree with Mr. Mooney that there is nothing in Datuk Ting Lik Hung's affidavit to indicate any reason for granting stay of execution. Mr. C. T. Wong said that by bringing appellant in as a "watchdog director" would bring the parties into conflict in the Board room. After all, there are other directors to see that meetings are conducted with decorum and dignity. The appellant was made a "watchdog director" as from August 4, 1975 and he should concern himself with matters arising thereafter and not with what had happened previously and dealt with by the court. He is put there not to cause obstruction to the running of the company. He can oppose but I do not think he can prevent the normal despatch of business. For Article 86 of the Articles of Association clearly makes clear that "questions arising at any meeting shall be decided by a majority of votes of the directors present, each director having one vote."

It is my view that where stay of execution has previously been refused by this court after a hearing of an appeal lasting over a week, an application made to the same court for stay pending an appeal must be supported by special circumstances. Allegations that there has been misdirections that the verdict of judgment was against the weight of evidence, or that there was no evidence to support the verdict or judgment, are not special circumstances on which the court will grant the application. See *Monk* v. *Bartram*.[7] Those are matters to be decided in the proper forum.

Leave to appeal to the Yang Dipertuan Agung on the same terms as were granted to second and third respondents previously will be granted. The six months period is to be calculated as from August 4, 1975. For reasons given, stay of execution of the orders is refused. Costs to be cost in the cause.

Stay of execution refused.

Solicitors: *Tang & Co.; Yong & Wong.*

V. MANUEL v. OMAR BIN HAJI AHMAD & ORS.

[F.C. (Suffian L.P., Wan Suleiman F.J. and Chang Min Tat J.) October 30, 1975]

[Kuala Lumpur — Federal Court Civil Appeal No. 164 of 1974]

Practice and Procedure — Interpleader summons — Money and title deeds held by advocate and solicitor — Claim for money to be released — Claim for costs by way of lien — R.S.C. 1957, O.54 r.4F.

Practice and Procedure — Costs — Claim for by way of lien.

The appellant, an advocate and solicitor, had received a sum of money and certain title deeds and as there were various claims to them, he took out an interpleader summons. One PL. Chidambaram Chettiar applied for the release of the money to him. The appellant said he had no claims to the money other than for taxed costs. The application of PL. Chidambaram Chettiar was allowed. The appellant appealed to the Federal Court.

Held, dismissing the appeal: in the circumstances of this case, the appellant had not made out a case for a prior claim to costs by way of lien.

Case referred to:-

(1) *Angus* v. *Wootton* (1837) 3 M. & W. 310.

FEDERAL COURT.

G. T. Rajan (*V. Manuel* and *P. G. Segram* with him) for the appellant.

Morris Edgar for the respondents.

Chang Min Tat J.: This is an appeal from the decision of Abdul Hamid J. given on October 28, 1974 on a summons in chambers made *ex parte* by the respondent PL. Chidambaram Chettiar acceding to the application for the sum of $14,264.70 deposited by the appellant into court to be released to him as claimant. Though made *ex parte*, the appellant made himself available both in chambers and in open court on adjournment thereto and he was at all times heard.

The sum of $14,264.70, the subject-matter of the application was said to be part of the sum of $27,800 paid to the defendant as far back as May 15, 1970. It represented the balance of the proceeds of sale of land held under Certificate of Title No. 10,003 in Jalan Pantai Bahru, in the State of Selangor, registered in the name of Haji Ahmad bin Haji Abdullah, now deceased, of whose estate Omar bin Haji Ahmad was the administrator *de bonis non*. It was alleged that together with the sum of $27,800 were deposited also 6 title deeds.

On January 3, 1973, this Omar bin Haji Ahmad, as such administrator and Harun bin Haji Yunus, as administrator of the estate of Aishah binti Haji Abdullah caused a writ to be issued against the appellant for the release of the sum of $27,800 and the six title deeds.

Almost immediately after the service of the writ on him, the appellant filed an application by way of summons in chambers for interpleader relief. He cited 4 claimants. The first was the same Omar bin Haji Ahmad but as administrator of the estate of Haji Saleha binti Haji Mohamed Din. The others were W. E. Perera, PL. Chidambaram Chettiar and Oon Seng Teong. The appellant in the summons called on the various claimants to appear and state the nature and particulars of their claims to (1) the sums

of money belonging to the estates of Haji Ahmad bin Haji Abdullah and of Aishah binti Haji Abdullah in his possession and (2) the 6 title deeds in the names of Omar bin Haji Ahmad and Harun bin Yunus as representatives, also in his possession. By the terms of the summons, the claimants were either to maintain or relinquish their claims and abide by such order as the court might make. There was also a prayer that in the meantime all further proceedings be stayed.

The appellant was at all times and is an advocate and solicitor of the High Court of Malaya practising as Manuel & Co.

In his affidavit in support of his application, the appellant admitted to receiving as solicitor for the plaintiffs the sum of $27,247.12 and 8 title deeds. He claimed to have deducted from the sum received by him $3,500 by way of agreed fees for the purpose of recovering lands and of money, and paid $4,582.42 for "disbursements and outgoings," $2,400 to Omar, $750 to Harun, $750 to one Hassan bin Haji Ahmad and $1,000 to one Ibrahim bin Haji Ahmad. The total of his deduction and payments came to $12,982.42 which left him with $14,264.70 in his client's account.

Two of the eight title deeds had pursuant to an order of court in Civil Suit 1366 of 1970 been transferred to PL. Chidambaram Chettiar, the third claimant cited.

The appellant then in his affidavit affirmed that he claimed no interest in the sum of $14,264.70 and the 6 title deeds "other than for such sums as may be the taxed costs for work done and for the costs of this application." He listed the various matters in which he said he had acted for the plaintiffs. Of this list, he admitted to have been paid his fees in respect of Civil Suit 360/1970 and the fees in respect of item (1), which was stated to be "In the matter of the recovery of the sum of money and the title deeds to lands from Oon Seng Teong" were said to have been taken into account. What was exactly meant is perhaps not very clear; whether this compendious claim did or did not include all the other actions which were in the list was not certain. Neither was the amount nor nature of the fees for Civil Suit 360/1970. The amount would appear to be $8,000. That was the sum alleged in the Statement of Claim and admitted by learned counsel for the appellant in his submissions before this court. However, the appellant expressed himself as willing to deposit the 6 title deeds and the $14,264.70 less his taxed costs into court or to dispose of the same in such manner as the court or judge might order.

But so far as I am advised, the appellant had not as yet presented a bill of costs, presumably a solicitors and clients bill to his clients or have his bill taxed. This inordinate delay is difficult to understand, particularly in view of the various claims to the money.

To this interpleader summons, W. E. Perera, the second claimant appeared. He filed an affidavit in which he admitted to no interest in the money attached by PL. Chidambaram Chettiar, the third claimant. He had interest only in the 6 title deeds but an order had been made in Civil Suit 842/1971 in the High Court ordering Omar and Harun as such administrators to transfer the 6 titles to him. This order of court was made on January 29, 1973, and though not expressed to be by consent, it was entered on the admissions in the statement of "defence" of the existence of an agreement of sale.

The third claimant was said by the appellant not to have appeared to the interpleader. He did not, in other words, file an affidavit stating the nature of his claim. But he made an application by summons in chambers for the release of the sum of $14,264.70, the subject-matter of this appeal.

In the meantime, however, the plaintiffs had applied to sign judgment in default of defence being filed. In his affidavit in support, Omar referred to the affidavit filed by the appellant, denied that there were any fees due, alleged full settlement of such fees and asked that the appellant be directed to pay the $27,247.12 into court against the claim in Civil Suit 65/1971. The appellant filed an affidavit in reply. We are not advised whether this application to sign judgment had been heard and if so what was the decision, but the appellant then delivered his defence which alleged that the sum had now been reduced to $14,264.70 and that the property of the estates in his possession had been attached in two garnishee proceedings, Application for Execution No. 105/1971 by PL. Chidambaram Chettiar and Application No. 184/71 by W. E. Perera. The appellant repeated his claim for costs.

In answer, Omar apart from other allegations all refuting the contentions of the appellant, produced a receipt for $8,000 from Rajasingham & Co. a firm of advocates & solicitors expressed to be "full-payment of fees in respect of K.L. High Court Civil Suit 360/1970."

In the meantime, the summons for interpleader relief came up for hearing on April 9, 1973 and an order was made, by consent, that the 6 title deeds and the sum of $14,264.70 be deposited into court. The appellant complied with the order.

Then, W. E. Perera made an application *ex parte* for the 6 title deeds. The appellant appeared at the hearing and presumably was heard. An order was made in terms. Following arguments in open court on application by the appellant the order was confirmed, despite his contention for his fees. An appeal was lodged to the Federal Court in F.C. Civil Appeal No. 91/73 and dismissed with costs on January 15, 1974.

Next on September 14, 1974, PL. Chidambaram Chettiar possibly following the footsteps of W. E. Perera filed a summons in chambers for the sum of $14,264.70. He claimed to be entitled to the money "as a claimant". Again the appellant was present at the hearing in chambers and similarly made an application for further hearing in open court. The contentions advanced by the appellant were that the interpleader application had not been decided and that he had a lien for his costs.

The learned judge found on the affidavits evidence that the money was paid to the appellant's firm specifically to satisfy PL. Chidambaram Chettiar's claim. He did not deal with the question of a solicitor's lien.

From the record, a clear dispute arose between the plaintiffs and the appellant as to the latter's status, the plaintiffs' allegation being that the appellant was "acting" for R. Rajasingam & Co. The appellant alleged that he was entitled to his taxed costs but did not in precise terms such as would be expected of him claim to be the solicitors for the plaintiffs. The receipt produced by the plaintiffs for the $8,000, which for some reasons not made known to us, was not in the firm's usual form of receipt, was for "full payment of fees" for Civil Suit 360/70 which presumably must include counsel's fees. There was a somewhat exasperating vagueness in the several affidavits and I was therefore led to the consideration whether in all the various matters in which the appellant claimed to have acted for the plaintiffs the appellant was in truth the solicitor.

I proposed therefore to consider the various matters in the sequence listed by the appellant in paragraph 11 of his affidavit which accompanied his interpleader summons:

(i) In the matter for the recovery of the sum of money and the title deeds from Oon Seng Teong.

This was settled by a deed of discharge entered into between Omar as administrator of the estate of Haji Saleha binti Haji Mohamed Din and Harun, on the one part and Oon Seng Teong on the other part, whereby Oon was to pay to the solicitors for Haji Saleha and Harun the sum of $27,247.12, being $31,051.92 (balance from $336,000 purchase price for 29 lots of land at Jalan Pantai Bahru less distributions and disbursements amounting to $304,948.08) less $3,804.80 payments for assessments and quit rents.

The appellant attested the execution of Omar and Harun.

(ii) In the matter of Civil Suit No. 360/1970.

In this action, Perera sued Omar as administrator of the estate of Haji Saleha for the sum of $47,710.78¢ being the balance from $116,400 due to the plaintiffs for the sale of 9.7 lots held under C.T. 10,003.

The defendant Omar who first appeared in person subsequently appointed R. Rajasingam & Co. to act for him. His solicitors filed a defence and made a counterclaim, but they were immediately after that, discharged. Omar then applied to withdraw his defence and counterclaim. His application appeared to have been made by another firm of solicitors (T. Ariarajah & Co.) without the solicitors filing a retainer. Leave was granted and judgment entered on the claim on June 8, 1970.

Subsequently on July 4, 1970, the plaintiff Perera applied to execute for the judgment sum against the eight lots of land then registered in the name of Oon Seng Teong, but in pursuance of the Memorandum of Discharge, due to be transferred to Omar and Harun as administrators.

(iii) In the matter of the Execution Proceedings of the Consent Judgment in C.S. 360/1970.

In the execution proceedings R. Rajasingam & Co. replaced T. Ariarajah & Co. as the solicitors. At the hearing, the appellant appeared as counsel. The application was dismissed.

(iv) In the matter of High Court Civil Suit No. 1366 of 1970.

In this action PL. Chidambaram Chettiar sued Omar, Harun and Oon for specific performance in respect of 2 lots of land.

An affidavit was filed for Omar by R. Rajasingam & Co. who did not appear to have entered an appearance until just before the hearing. Again the appellant appeared as counsel. There was no serious contention against the claim and judgment was entered for the plaintiff on an application to sign judgment.

(v) In the matter of High Court Civil Suit No. 1458/1970.

Perera sued Omar as administrator of the estate of Haji Ahmad bin Haji Abdullah for the repayment of a friendly loan of $15,000 made without interest to Omar as such administrator. R. Rajasingam & Co. entered an appearance for Omar and delivered a defence.

This case has not been heard and there is no record of any attendance by the appellant in court.

(vi) In the matter of High Court Civil Suit No. 1555/1970.

In this action, Omar as administrator of the estate of Haji Ahmad sued Perera for $68,689.22 said to have been fraudulently collected by the defendant from various purchasers of the land in C.T. 10,003 and for accounts. The writ was issued by R. Rajasingam & Co. as solicitors for Omar. Following a conditional appearance, the defendant applied to set aside the specially endorsed writ for failure to comply with O.3 r.6(1) of the Rules of the Supreme Court. At the hearing of the motion in open court the appellant appeared for Omar. One would have expected him to resist the motion but the court records read that Mr. V. Manuel with the consent of counsel for the applicant withdrew the summons with liberty to file a fresh one. The minute was probably in error.

(vii) In the matter of Federal Court Civil Appeal No. 100/71.

This was an appeal preferred by Perera from the order of court in Execution Proceedings (see (iii) above) in Civil Suit 360/1970 which ruled that Perera was not entitled to enforce the order of court in Civil Suit 360/1970 against the estate of Haji Saleha. The appeal was dismissed with costs.

The notice of appeal and the memorandum of appeal were addressed to V. Manuel & Co. as solicitors, but as noted earlier on, the solicitors on record were first R. Rajasingam & Co. and then T. Ariarajah & Co.

(viii) In the matter of the Application for Execution No. 105/71.

This was an application by PL. Chidambaram Chettiar to levy execution against Omar to satisfy a judgment entered in default of appearance in Civil Suit 65/1971 for $22,400, interest at 6% and costs at $120. Together with this application was a notice of garnishment to the appellant in respect of all moneys and goods of the defendant in his possession. The

appellant appeared to be examined. He admitted to having certain assets with him but adverted to claims on these assets by other claimants and beneficiaries. In the result and in the light of the interpleader summons in Civil Suit 7/1973 and the appeal to the Federal Court (vii) above the application was stood over.

Omar the judgment debtor did not appear to have been served and no appearance was entered for him. But there was a discharge signed by him discharging V. Manuel as the solicitors "hitherto employed in these proceedings," meaning presumably the execution proceedings. In any event, having regard to the very possible conflict of interests, it must be a matter of grave doubts whether the appellant could properly act for Omar.

Subsequently (and this is part of his confusion in the language used) Harun and Perera (who were not parties in these proceedings) and Omar appointed Allen & Gledhill to act on "your" behalf.

(ix) In the matter of High Court Civil Suit 842/1971.

Perera sued Omar as administrator of estate of Haji Ahmad bin Haji Abdullah, Harun, administrator of estate of Aishah binti Haji Abdullah, and Oon for specific performance of sale of 9 lots, numbering 19 to 27 inclusive and a half in lot No. 28, comprised in the same piece of land.

Tungku Zuhri, Manan & Abdullah appeared as solicitors for Omar and Harun. They delivered a defence conceding the claim of the plaintiff and judgment was entered accordingly.

There is a skip from (ix) direct to (xi). This item was expressed to be for various miscellaneous matters. The heading is too imprecise to be followed up.

All this litigation arose out of the ownership of a piece of land comprised in C.T. 10,003 for lots 2515 and 4094, in the Mukim and District of Kuala Lumpur, in area of about 4 acres 3 roods 02.4 poles. The original co-owners were Haji Ahmad bin Haji Abdullah, Aishah binti Haji Abdullah and Bugardeen Mohd. Ibrahim s/o Sena Kadermeesah Bugardeen. They held the land in undivided shares, 14/32, 11/32 and 7/32 respectively. The land had great potentiality for development and an agreement was reached for subdivision and the distribution of the sub-divided lots amongst the co-owners or their estates in satisfaction of their undivided shares. The plan for subdivision was submitted to and approved by the Municipality of Kuala Lumpur. It is apparently thought that such sub-division and distribution were not essential for the court to understand this rather complicated story and all references to them were excluded from the record.

Haji Ahmad and Cik Aishah had died before the sub-division was agreed upon. Letters of Administration were granted in the estate of Haji Ahmad to his widow, Haji Saleha binti Haji Mohamed Din and in the estate of Aishah to Harun.

Haji Saleha and Harun proceeded to enter into various agreements for sale of portions of their undivided holdings. On November 29, 1957, Haji Saleha as such administratrix agreed to sell a ½ acre piece of land comprised in the certificate of title to Perera for $24,000. When it was found that part of this piece of land agreed to be sold had to be given up for road and other development purposes, the agreement was replaced by another one, executed on April 28, 1958 to give effect to the same bargain. The consideration was expressed to be paid in full. This was followed by an "Agreement of Confirmation" in March 1963, where the area agreed to be sold was identified as lots numbered 19 to 27 inclusive and half of lot 28.

Haji Saleha also sold on June 2, 1958 and again on April 30, 1960 two small pieces of land in the same certificate of title under agreement, the benefit of which was with the knowledge and consent of Omar as administrator of the estate of Haji Saleha, who had in the meantime died assigned to Chidambaram Chettiar. One of the assignments was witnessed by the appellant.

Since the sale was by Haji Saleha as administratrix of the estate of Haji Ahmad, the confirmation should of course be by Omar as administrator *de bonis non* of the estate of Haji Ahmad, which he also was, but the mistake if any was of no consequence. Omar was the son of Haji Ahmad and Haji Saleha. He had several brothers and sisters, so that he and his brothers and sisters are together entitled to all the assets of the estates of Haji Ahmad and Haji Saleha.

Then on March 13, 1964, Haji Saleha as such administratrix and Harun as administrator sold to Oon lots nos. 17 to 29 inclusive and lots nos. 37 to 47 inclusive, making a total of 29 lots for $290,000 of which a part payment of $125,560 was made. One of the terms of the agreement was that Oon was to obtain the new title deeds to be issued in his name and to transfer such titles as were not included in the sale to the vendors. In the events that happened, there were 8 such titles.

But lots 17 to 27 and half of lot 28 sold to Oon had previously been sold to Perera. However, Perera did not seek, perhaps correctly, to set aside the transfers to Oon but claimed six of the titles transferred by Oon to Omar and Harun, Chidambaram Chettiar claiming the other two.

It is not necessary to speculate how such a relatively small estate administered as it was with legal advice met with such varied and extensive litigation but it is obvious that having regard to the several agreements in existence, any defence to the claims of Perera and Chidambaram Chettiar for specific performance was untenable. Not surprisingly therefore even for a layman, Omar instructed his solicitors not to defend Civil Suit No. 300/1971 and possibly against the advice of his first solicitors, applied by another firm of solicitors to withdraw his defence and counterclaim.

To come back to the main stream of events, on the taking of accounts, Oon agreed to pay the balance of the purchase price for his 29 lots amounting to $27,247.12 and to hand over the 8 titles to land not purchased by him with transfers executed by him to Omar and Harun through the appellant. The terms

of the agreement were clear and Oon did not appear to have resisted in any way to the claim for the balance of the purchase price and to the lots not purchased by him.

Perera made no claim to the money. He claimed and obtained an order of specific performance of his agreement to purchase of April 28, 1958 as confirmed in writing in March 1963, the order taking the form of a direction to transfer the 6 titles.

Chidambaram Chettiar also obtained an order for the transfer to him of the other 2 titles. But he also had a judgment against the estates of Haji Ahmad in Civil Suit 65 of 1971 for $22,400 with interest at 6% and costs at $120 and as I understand him it was in satisfaction of this judgment that he made claim to the money in court.

The appellant's contention for his costs appeared to be founded on a prior right by way of lien. His purported lien is a solicitor's but the examination of the work listed by the appellant which I have undertaken shows that in all the matters referred to, so far as can be seen the appellant appeared as counsel, since there were at all times other solicitors on record. Even in a fused profession such as we have in this country, where an officer can both be an advocate as well as a solicitor, it is most unusual for the same litigant to have 2 sets of solicitors. No person should, in my view, be burdened with the luxury and the further costs of a second solicitor. It is wholly unnecessary. If as Omar claimed and the presence of a solicitor for Omar would appear to substantiate, the appellant was engaged by R. Rajasingam & Co. to appear as counsel, then he the appellant as counsel was only entitled to his fees and must in my view look to R. Rajasingam & Co. for his fees, leaving it to the solicitors who appointed him to seek to recover the fees by way of costs from Omar. In this connection, the use by him of "fees" which is a word of some technical meaning in law, in reference to Civil Suit 360/1971 is of some relevance and would appear to support what I believe to be the truth of the matter. There was however some evidence on the record that the appellant had undertaken solicitor's work, but it was not clear whether he did so as agent for the appointed solicitors and if a court could not feel confident, as I do not, to consider his claim on such a confusion, the appellant had only himself to blame.

Further, if he had a claim for solicitor's costs, the claim was at best indeterminate until he had presented a proper bill for his costs which was accepted by his client or obtained an order to tax his costs. The stark fact was that he had at no time presented any bill, nor had he obtained an order to tax, which he must do if his client refused to accept his bill. The result was that the amount of costs, if any, due to him had still to be determined. Neither had the appellant at any time applied for a solicitor's charging order for his costs.

Then if he had a prior right over the claims of the respondent, (of which I do not find it necessary to express an opinion in the circumstances of this case and in view of the decision I have reached), he has been guilty of such laches as would clearly disentitle him to the benefit of the court's discretion in his favour.

But there is, I find, some uncertainty whether the money was sent to the appellant as solicitor for Omar and Harun. There is a letter annexed to the affidavit of Oon in the file of Civil Suit 633/1971 from Rajasingam & Co. acknowledging the receipt by them as solicitors for the administrators of the title deeds and the sum of $27,247.12 which the solicitors averred had been deposited in their client's account. How the deeds and the money passed to the appellant remained one of the unexplained mysteries in the history of the litigation which had plagued these two estates.

Next, it was suggested that the claim of Chidambaram Chettiar was against the estate of Haji Ahmad and the money which was held in trust for the estates of Haji Ahmad and Aishah should not be realised to satisfy the claim against only one of them. I do not with respect consider it quite within the province of the appellant to object on this ground against an order of court, particularly when Harun was not in his affidavit opposed to it.

Lastly it was argued that the interpleader summons had still to be heard and the order should not have been made until it was determined, it being thought that the application of Chidambaram Chettiar for the money was not a proper appearance to the summons. If there was any foundation for this suggestion, the application was in my view tantamount to such an appearance. I consider, particularly since Perera and Oon had clearly no claims and Omar as well as Harun had acknowledged the claim that the interpleader summons had effectively been determined. In any event, it has been said in *Angus* v. *Wootton*[1] that an execution creditor need not appear as his claim was obvious. Refer also to O.54 r.4F of the Rules of the Supreme Court. But Chidambaram Chettiar's claim was made, as the heading of his application showed, in the interpleader proceedings.

I would therefore dismiss the appeal with costs.

Suffian L.P. and **Wan Suleiman F.J.** concurred.

Appeal dismissed.

Solicitors: *Manuel & Segran; Morris Edgar & Co.*